

_____))
Plaintiff,))
v.) Case No. _____)
_____))
Defendant.))

Answer with Grounds of Defense to an Unlawful Detainer

Defendant, for her/his Answer with Grounds of Defense to the Summons for Unlawful Detainer and Bill of Particulars filed herein, states as follows:

Under the heading "Answer" respond to each paragraph of the Bill of Particulars.

Defendant admits all of the allegations in paragraph ____ of the Bill of Particulars.

Defendant denies all of the allegations in paragraph ____ of the Bill of Particulars.

Defendant lacks knowledge or information to be able to admit or deny all of the allegations in paragraph ____ of the Bill of Particulars.

If no Bill of Particulars was filed, skip down to Grounds of Defense.

Some Grounds of Defense

Defective Notice

Upon information and belief, Plaintiff's notice and summons misstated the amount of rent owed by Defendant, preventing him from understanding what he was being charged for or to tender payment of the arrearage. Plaintiff cannot sustain an action in unlawful detainer based on an inaccurate and defective notice and summons.

Waiver: Plaintiff Failed To Reserve Its Rights

Upon information and belief, Plaintiff accepted payments of rent subsequent to the filing of this suit without written reservation of her rights, as required by Virginia Code [55-248.34](#), and therefore cannot sustain this action.

Plaintiff's Bill Of Particulars Is Deficient

And Should Be Stricken

Plaintiff, in its Bill of Particulars, states that the tenant was given a thirty-day notice to vacate for various lease violations. Yet, nowhere does plaintiff specify what these alleged violations are, making it impossible for the Defendant to prepare a defense.

Basic principles of due process, as well as Virginia Law, require specific notice and an opportunity to defend the charges in this action. Because the Bill of Particulars is deficient in this regard it may not serve as a foundation for this eviction.

Plaintiff Is Limited To The Grounds Set Forth In The Bill Of Particulars

Paragraph 2 of Plaintiff's Bill of Particulars states that the grounds for this Unlawful Detainer are various lease violations. However, at this time Plaintiff seeks to evict defendant without setting forth a prima facie case as to these grounds.

By stating lease violations as a reason for eviction in its Bill, Plaintiff has based this action upon said allegations, and may not proceed upon separate grounds under Rule [7B:2](#). of the Virginia Supreme Court.

Tender And Refusal

Plaintiff refused to accept Defendant's tender for rent due. Plaintiff had the right to accept rent with reservation under Virginia Code [55-248.34](#), but chose not to do so. Therefore, Plaintiff has waived its right to collect rent for the months it refused rent.

Retaliatory Eviction

The Plaintiff's case was filed after Defendant reported the condition of the premises to the _____ Health Department and this is a retaliatory eviction forbidden under Virginia Code [55-248.39](#).

Plaintiff Failed To Give Opportunity To Cure

The Plaintiff alleges a breach of lease that is curable and thus should have issued a 21/30 day notice to cure pursuant to Virginia Code [55-248.31](#). Plaintiff failed to provide such notice or opportunity to cure and therefore cannot proceed in this action.

Defendant Did Not Detain Unlawfully

Unlawful possession of the premises is a necessary element of Plaintiff's case under Virginia Code [8.01-124](#) and [8.01-128](#). Defendants were not unlawfully possessing the premises on _____, but were, in fact, lawfully possessing the premises. The earliest the Plaintiff could have filed this action was _____.

The Money Claimed Is Void As A Penalty

Pursuant to Virginia Code [59.1-200](#)(13), any liquidated damage clause in a contract or lease which is void or unenforceable under the laws of this Commonwealth is prohibited. Such a clause is void and unenforceable if either: 1) the damage resulting from a breach of the agreement is susceptible to a definite measurement; or 2) the stipulated amount of damages would be grossly in excess of actual damages. Taylor v. Sanders, 233 Va. 73, 75, 353 S.E.2d 745 (1978).

In addition, if there is doubt, courts are likely to find such a clause void as a penalty rather than a valid liquidated damages provision. Ewing v. Litchfield, 91 Va. 575, 581, 22 S.E. 362 (1895).

The damages resulting from a breach of this agreement are susceptible to a definite measurement because they are represented by the fair market value of the property.

Therefore, the Concession Payback damages should be dismissed as void as a penalty for breaking the lease, or in the alternative, reduced to \$_____ because the Defendant only occupied the residence for five months at \$_____ per month penalty.

Plaintiff Is Not Entitled To Legal Fees

[55.248.31](#) of the Virginia Residential Landlord and Tenant Act provides that a landlord may recover reasonable attorney's fees only if the tenant's noncompliance is willful.

Defendant's noncompliance was not willful. Defendant was unable to continue paying rent because his heart condition and doctor's orders prohibited him from working. Defendant explained this to Plaintiff. As stated above, Defendant told Plaintiff that he was going to surrender the premises and Plaintiff indicated that this was acceptable. Defendant vacated the premises at the agreed upon time.

Therefore, Plaintiff is not entitled to recover attorney's fees from Defendant because Defendant's noncompliance is not willful, and any lease provision which purports to entitle Plaintiff to recover legal fees should be deemed unenforceable

pursuant to 55-248.9(4) of the Virginia Residential Landlord and Tenant Act.

COUNTERCLAIM

Security Deposit

On or about _____, Defendant entered into a lease agreement with Plaintiff. [See Plaintiff's Exhibit ____]

In accordance with paragraph ____ of the lease agreement, Defendant paid to Plaintiff a Security Deposit in the amount of \$_____.

According to the lease agreement, Plaintiff is required to return the Defendant's security deposit or a statement of accounting for damages within ____ days from the date Defendant vacates the premises.

Defendant vacated the premises on _____, making the security deposit due as of _____. Defendant therefore requests judgment in her favor in the amount of \$_____.

WHEREFORE, Defendant, having fully answered, prays for entry of an Order that dismisses with prejudice the Summons for Unlawful Detainer filed against her/him by Plaintiff herein.

I declare under penalty of perjury that this information is correct.¹

Defendant's signature

Subscribed and sworn to (or affirmed) before me this day:

DATE CLERK DEPUTY CLERK NOTARY PUBLIC (MY COMMISSION EXPIRES _____)

Street Address or Post Office Box

City, State and Zip Code

Tel: _____

¹ If filed *pro se*

Fax: _____

Certificate of Service

I certify that a true copy of the above _____ was
Name of Pleading

mailed, faxed _____, _____, electronically mailed² by
Fax No. Time

agreement, or hand-delivered on the _____ day of _____, _____, to:
Day Month Year

Name and Address of Counsel of Record and/or Parties not Represented by Counsel

Person certifying

² Pursuant to Virginia Supreme Court Rule [H1:12H](#) as Amended October 15, 2003
www.lsnv.org 8/15/05 Revised 12/29/05